

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SAMUEL V. AVILA,

Plaintiff,

vs.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants.

Case No.: 2:13-cv-00569-GMN-GWF

ORDER

According to the documents filed in this case, pro se Plaintiff Samuel V. Avila initiated this action on March 6, 2013 in the Eighth Judicial District Court of the State of Nevada against Defendant Federal National Mortgage Association. (Notice of Removal ¶ 1, ECF No. 1.) Defendant subsequently removed the action to this Court based on diversity jurisdiction. (*Id.* ¶¶ 2-6.)

On November 1, 2013, Defendant filed a Notice of Suggestion of Death, in which Defendant stated that Plaintiff's daughter, Elvia Avila, notified Defendant's counsel that Plaintiff Samuel V. Avila previously passed away on November 17, 2012. (Suggestion of Death, ECF No. 24.) The Court then entered an Order to Show Cause why the case should not be dismissed given that Plaintiff was deceased at the time the lawsuit was initiated. (Order, ECF No. 27.) Both parties filed a response. (ECF Nos. 27, 28.)

Legal actions cannot be commenced by deceased individuals; any such "action must be treated as a nullity." *See Banakus v. United Aircraft Corp.*, 290 F. Supp. 259, 260 (S.D.N.Y. 1968); *see also Adelsberger v. United States*, 58 Fed.Cl. 616 (Fed.Cl.,2003) (noting that when a plaintiff dies prior to the filing of a complaint, he lacks the capacity to sue). Additionally, because such an action would be void at its inception, the complaint "cannot be given life by

1 substituting parties and amending the complaint.” *Banakus*, 290 F. Supp. at 260; *see*
2 *Adelsberger*, 58 Fed. Cl. 616 (Fed. Cl. 2003) (concluding that substitution of the deceased’s
3 estate was inappropriate where the plaintiff predeceased the filing of the complaint); *see also*
4 Fed. R. Civ. P. 25(a) (providing for substitution in the event of a parties death after the
5 initiation of a lawsuit).

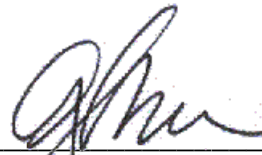
6 Because Samuel V. Avila predeceased the commencement of this action, it was void at
7 its inception and must be dismissed.

8 **CONCLUSION**

9 **IT IS HEREBY ORDERED** that Plaintiff’s Complaint is **DISMISSED without**
10 **prejudice.**

11 The Clerk of the Court shall enter judgment accordingly.

12 **DATED** this 26th day of November, 2013.

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16 Gloria M. Navarro
17 United States District Judge
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